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IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO.5546/2005

PETITIONER : Firm Karm Cinema, Balco T/S, Tehsil and District Korba, through Its Partner Ashok Kumar Agarwal S/o FatehChand Agarwal , Aged About 45 years, R/o Ring Road, Balco, Korba (C.G.).

VERSES

RESPONDENTS :

1. Madhya Pradesh Film Vikas Nigam, Sanskrit Bhavan,Banganga Bhopal, Madhya Pradesh.

2. Bharat Aluminium Company Ltd., Through its General Manager,Balco T/s, Korba(C.G.)

3. Baijnath Sharma,S/o Not Known,Age not known,R/o Shanti Nagar, Balco Nagar, Korba (C.G.).

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक

W.P. No. 5546
मामला क्रमांक ..... सन् 2005

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

15.6.2006

Shri Ravish Verma, counsel for the petitioner.

None for respondents.

Heard on I.A. No. 3289/2006.

Vide order dated 17.1.2006, the petitioner was directed to file amended writ petition and in compliance to that, along with the instant application I.A. No. 3289/2006 for condoning the delay, amended petition has been filed. In view of the aforesaid facts and grounds mentioned in the application I.A. No. 3289/2006 is allowed.

Heard on admission.

5th Additional District Judge, Bhopal passed the judgment and decree against the petitioner in favour of respondent No. 1 for payment of Rs.13,98,433.41 paisa and also authorized respondent No. 1 to recover the amount from the mortgaged property. The decree was transferred for execution to the Korba Court in accordance with law and Korba Court started execution proceeding. In execution, the property of petitioner/judgment-debtor has been attached for realization of the decretal amount. The petitioner objected to the attachment by filing an objection wherein petitioner raised objection that the list of mortgaged property duly certified by Bhopal Court has

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not been filed. Moveable property is also attached with the immoveable property i.e. mortgaged with the decree holder. Therefore, only symbolical attachment was possible whereas actual attachment has been effected and after attachment, the property has been given on 'supurdnama' to a third person, hence judgment-debtor is debarred from utilizing his property. Learned executing Court after due hearing, passed the impugned order on 25.2.2002 whereby the objection filed by judgment- debtor/petitioner has been rejected. Being dissatisfied with the order, this writ petition has been filed.

When an objection under Order 21 Rule 58 of the C.P.C. against any attachment has been filed and is disposed of by judicial order by the Executing Court, the said order has an effect of decree, therefore, if aggrieved, objector may file appeal in accordance with law, or take steps in accordance with Order 21 Rule 58(5) of the CPC which authorizes the objector to file civil suit to establish his right, but instead of doing so in accordance with common law, the petitioner/judgment-debtor has approached this Court under Article 226/227 of the Constitution of India.

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It is pertinent to mention that the decree has been passed on 2nd day of December,1996. More than 9 years have been passed but the decretal amount has not been paid by the judgment-debtor/petitioner who is bound to obey the order of the Court and to satisfy the decree.

From petition itself, it is clear that the attached immoveable property is mortgaged property. Therefore, whether certified copy of list of mortgaged property has been filed or not is immaterial. If immoveable property consists of moveable also has been attached and given on supurdnama, to my opinion, the action taken by the Court is not such, which may call for interference by High Court in its constitutional jurisdiction.

In view of the above, the writ petition filed by the petitioner is liable to be dismissed *in limine* and is accordingly dismissed.

Sd/-
V.K. Shrivastava
Judge